IN THE SUPREME COURT OF THE U. S.

DECEMBER TERM, 1867.

No. 147.

REUBEN WHITE, PLAINTIFF IN ERROR,

VS.

ELIJAH CANNON, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

HUGHES, DENVER & PECK.
OF COUNSEL FOR PLAINTIFF IN ERROR.

WASHINGTON, D. C.
PRINTED BY WM. H. MOORE, 494 ELEVENTH STREET.
1868.

IN THE SUPREME COURT OF THE U. S.

December Term, 1867.

REUBEN WHITE, Plaintiff in Error,
vs.
ELIJAH CANNON, Defendant in Error. } No. 147.

Abstract of the Case.

The title of Reuben White, plaintiff in error, is thus briefly described:

Under the provisions of an act of Congress of the 6th of February, 1835, entitled "an act for the final adjustment of claims to lands in the State of Louisiana," (4th U. S. Statutes at Large, p. 749), one *John McLoughlin* claimed before the Register and Receiver of the Land office at Opelousas, a tract of 640 acres of land, in the neutral territory between the Rio Hondo and Sabine River, and lying on the right bank of the Red River, below and contiguous to Pascagoula bayou, and about sixty miles by land from the town of Natchitoches, founded on habitation and cultivation by the claimant, on and prior to the 22d of February, 1819. This claim was surveyed and located on the 5th of November, 1842, and the survey approved the 3d of March, 1843, and on the 20th of September, 1844, a patent was issued upon it in the name of John McLoughlin, who on the 22d of June, 1848, sold the land to said Reuben White. Reuben White is the party now in possession of the lands in controversy.

This was a petitory action under the code of Louisiana, for the recovery of the lands and damages. This form of action is equivalent to the common law Writ of Right, but it appears that in the

State of Louisiana, in addition to the question of legal title, the courts exercise large equity powers. The case was tried in the Court of Original Jurisdiction before a jury, and in that *forum*, in the vicinity of the lands and where the parties litigant were well known, as well as the location of the lands, White, the plaintiff in error, was successful. *Cannon* appealed to the Supreme Court of Louisiana. The jurisdiction of that Court is peculiar. Although possessed of appellate powers only, and confined to the consideration of the case made in the court below, it appears to have power to render such a judgment or decree as the court below ought to have rendered. In the exercise of this jurisdiction, the Supreme Court of Louisiana, in this case, found the facts differently from the jury and Court of original jurisdiction.

The Supreme Court of Louisiana, however, expressly say in their opinion (beginning at Page 112 of the Record) that *Cannon* ought not to recover, *on the strength of his own title*, because legal title he had none, but they hold that the legal title of *White*, perfect in form and muniments, was obtained by fraud, practised upon the land officers and Congress of the United States, and further believing, it seems, that the Patent issued by the United States to *White's* grantor, ought to have been issued to the grantor of *Cannon* if due diligence had been used, and a proper case made, they hold and decree that the Patent issued to *White's* grantor created a trust in favor of *Cannon*, and thereupon the Supreme Court of Louisiana decree the lands in controversy to *Cannon*, with damages. In arriving at their conclusions on the question of facts in the case, the Supreme Court of Louisiana receive and consider sundry affidavits or depositions contained and set forth in Bills of exceptions contained in the Record. The Record discloses that it was a matter of serious controversy whether these depositions, or the question of their admissibility, constituted any part of the Record, which went on appeal from the Court of original jurisdiction to the Supreme Court. The Record also discloses the fact that the identity of the

lands claimed by *Cannon* was a disputed question of fact submitted to the Jury of the *visne* who originally tried the case, and also to the Supreme Court of Louisiana. The title, or claim of title, of *Cannon*, the plaintiff below, which the Supreme Court of Louisiana, while expressly declaring invalid upon its own merits, vitalize and *create* by imputing fraud to the legal title of *White*, is as follows:

Edward McLoughlin without location or survey, transferred by deed, a claim or inchoate claim to certain lands to Leonard Dyson. Leonard Dyson transferred to Stephen Tippett, John H. Mahle and Isaac Wright. John H. Mahle and Stephen Tippett transferred their interest to the same Isaac Wright. Isaac Wright conveyed to Elijah Cannon. This claim was presented to Congress and never confirmed, but *suspended*. No title was ever granted to this claim by the United States, nor patent issued. The identity of the land covered by the *Dyson* or *Cannon* claim, and the lands held by White, is a matter of dispute. The judgment of the Supreme Court of Louisiana in this case, was rendered a few days after the State of Louisiana had seceeded from the United States, or attempted to secede. In the midst of revolutionary excitement and preparations for war, the Record shows that a writ of error was sued out, removing the cause to the Supreme Court of the Confederate States at Richmond, Virginia. After the war it was brought to this Court.

Points for the Plaintiff in Error.

1st. *As to jurisdiction.*

This case comes within the 25th section of the Judiciary Act, because the decision of the Supreme Court of Louisiana deprives *White* the plaintiff in error, of the benefit of an act of Congress which it impugns and evades by its reasoning, but nullifies by its judgment.

2nd. The Supreme Court of Louisiana erred in receiving and considering the evidence rejected in the Court of original juris-

diction, and furthermore transcended and exceeded their powers therein.

3rd. Upon the facts as found and stated by the Supreme Court of Louisiana, the judgment of that Court ought to have been in favor of *White* the plaintiff in error, and against *Cannon* the defendant in error.

4th. It is respectfully suggested for the consideration of the Court:

1st. Whether the judgment of the Supreme Court of Louisiana, rendered at the time and under the circumstances above stated, is valid or void.

2d. Whether the writ of error removing the cause to the Supreme Court of the Confederate States, and operating as a *supersedeas*, has left any valid and subsisting judgment which can be enforced against *White*, the plaintiff in error.

NOTE.—In consequence of the rapid and unexpected progress in the call of the docket, the plaintiff asks leave to file a further and additional brief.

HUGHES, DENVER & PECK,
Of counsel for plaintiff in error.

Supreme Court of the United States.

DECEMBER TERM, 1867. No. 147.

REUBEN WHITE, PLAINTIFF IN ERROR,

vs.

ELIJAH CANNON, DEFENDANT IN ERROR.

This is a writ of error to the supreme court of the State of Louisiana. The defendant in error was the original plaintiff, and instituted this suit, a petitory action under the civil law, to recover a tract of land lying on Red River, in the Parish of De Soto, which, as he alleges, has been fraudulently taken possession of by the plaintiff in error. This case was lately before this court on a motion to dismiss the writ of error for want of jurisdiction. The court did not grant the motion, but ordered it to be argued, together with the merits.

The supreme court of Louisiana is a court of appeals. All the evidence comes up in writing, and that court takes cognizance both of the facts and the law of the case. But the Supreme Court of the United States examines only the questions enumerated in the 25th section of the judiciary act of 1789, and takes the facts as they are presented in the opinion of the court below. (Armstrong *vs.* The Treasurer of Athens County, (16 Peters, 281.)

With the aid of the very full decision of the Louisiana court, we will now show the title, both of the plaintiff and defendant.

TITLE OF DEFENDANT IN ERROR.

Before the treaty with Spain, of the 22d of February, 1819, (8 Stat. at Large, p. 252,) a portion of northwestern Louisiana, lying between the Rio Hondo and Sabine rivers, was claimed both by the United States and by Spain, and was designated as *neutral territory*. By that treaty the limits of the respective bordering territories of these two Powers in North America

were defined, and this neutral territory became the property of the United States.

By an act of Congress of the 3d of March, 1823, (3 Stat. at Large, 756,) provision was made for the examination of land titles in that district of country which was annexed to the land district south of Red River, and persons having claims to lands in it were authorized to file their claims with the register and receiver. These officers were directed to report on them to the Secretary of the Treasury, dividing the claims into four classes. The third class consisted of claims founded on habitation, occupation, or cultivation, previous to the 22d of February, 1819. An act of Congress, supplementary to this, was passed on the 26th of May, 1824, (4 Stat. at Large, 65,) but did not materially alter its provisions. Under these acts Leonard Dyson, assignee of Edward McLaughlin, filed a claim, by virtue of habitation, occupation and cultivation, to a tract of land lying within the late neutral territory, situated on the east side of Red River, on the east side of a cut-off which forms Norris's Island, and bounded on all sides by vacant land, and containing 640 acres. The cultivation and habitancy, previous to February 22, 1819, was proved by two witnesses. In a report dated November 1, 1824, (p. 861,) the register and receiver recommended this claim for confirmation. This claim was, together with many others, embraced in a report to the Secretary of the Treasury, and designated as belonging to the third class, and by an act of Congress of the 24th of March, 1828, (6 Stat. at Large, 382,) the claims contained in this third class were confirmed, except a certain number, among which were the claims of Leonard Dyson, Nos. 14 and 18, which excepted claims, says the act, "are suspended until it is ascertained whether they are situated within the lands claimed by the Caddo Indians." It being well known in the country where the land claimed was situated that the Indian claim did not extend over this country, the parties considered that their title was indirectly confirmed by the above-mentioned act of Congress. Dyson sold this land to Tippett, Mahle, and Isaac Wright. (P. 19.) Tippett and Mahle subsequently conveyed their undivided interests to Isaac Wright, and Wright himself sold the whole tract to E. Cannon, the defendant in error, who held possession of it for a long time by tenants, he himself being a resident of New Orleans.

TITLE OF PLAINTIFF IN ERROR.

John McLaughlin, the son of Edward McLaughlin, under whom the defendant in error holds, applied, under an act of Congress passed on the 6th of February, 1835, entitled "An act for the final adjustment of claims to lands in the State of Louisiana," (4 Stat. at Large, 749,) for the confirmation of a claim to the same tract of land to the register and receiver at Opelousas. He produced the testimony of two witnesses, who proved that John McLaughlin had inhabited and cultivated this land previously to the 22d of February, 1819. (P. 91.)

Upon this evidence the register and receiver recommended this claim for confirmation, (p. 91,) and it was confirmed by the 7th section of an act of Congress of July 6, 1842. (5 Stat. at Large, 491.)

The judgment of the supreme court declares that it is fully proved that the testimony upon which John McLaughlin's claim was recommended for confirmation was fraudulent, and that John McLaughlin never was on this land, except under the roof of his father. If this court had before it the irksome task of examining the entire evidence in the record, it would discover oft-repeated efforts on the part of the plaintiff in error to obtain possession of this land by fraudulent means, continued during a number of years. He continually urged John McLaughlin to sell to him, attempted to bribe Cannon's tenants to surrender possession to him, and, after he had induced John McLaughlin to sell, on the 22d of June, 1848, (p. 79,) he molested Cannon's tenants with suits, and thus fairly drove them from the land and took possession of it. But long previously, to wit, on the 12th of May, 1843, John McLaughlin, then following better counsel, had voluntarily made and placed on record, in the land office at Opelousas, an affidavit, (463,) which, as it is the most compendious illustration of this suit, we copy entire:

"*State of Louisiana, Parish of Caddo:*

"This day personally came and appeared before me, an acting justice of the peace in and for the State and parish above written, John McGlocklin, who, after being sworn in due form of law, declares that he is now fifty years of age, and a resident of this parish; and further, that he never did, at any time previous to the twenty-second day of February, eighteen hundred and nineteen, or at any time in that year,

reside below the bayou, then called Prairie river, but known as Pascagoula, which bayou lies between Red River and the Bayou Pierrie, and is within the limits of this parish, and that he consequently could not, under the treaty with Spain, be entitled to what is called a Rio Hondo claim; but that it is within his knowledge that Edward Maglochin, his father, did reside and cultivate below and on said bayou on the said twenty-second day of February, eighteen hundred and nineteen, and for several years previous; deponent further says, that it is within his knowledge that his father, Edward Maglouchlin, transferred by sale his claim on said bayou to one Leonard Dyson, and that said Dyson, as assignee of Maglouchlin, made regular entry of the same before the land commissioners, sitting at Natchitoches for the purpose, under the acts of 1823 and 1824; and this deponent further saith not. The word 'below' in the eleventh line interlined before signing.

his
JOHN ⋈ MAGLOUGHLIN.
mark.

"Sworn to and subscribed, by making his usual mark, (not being able to write,) before me, this 12th day of May, 1843.

"ROBERT V. MARYE,
"*Justice of the Peace.*"

REVIEW OF THE CASE.

Although the name is differently spelt, the supreme court of Louisiana does not question the identity of the individual, (p. 117,) which is indeed proved by the justice of the peace who drew up the affidavit at the instance of John McLaughlin, and before whom it was sworn to. (P. 22.)

It is difficult to conjecture why John McLaughlin made this affidavit. He was dead when the case was first tried. Perhaps he did so at the instance of Wright or Cannon.

More than a year after this affidavit, to wit, on the 20th of September, 1844, a patent was issued upon this fraudulent claim in the name of John McLaughlin. (P. 87.) This patent was not granted upon any special application, but was issued in the usual course of business of the General Land Office simultaneously with many other patents combined in the same report, which were sent for distribution to the surveyor general of the United States for Louisiana, as appears by the letter of the Commissioner of November 30, 1844. (P. 92.)

It is probably an accidental discovery of this patent which prompted the nefarious efforts of the plaintiff in error, and ended in the sale from John McLaughlin to him of June 22, 1848. (79.)

By consent of parties, the case was tried before nine jurors, who found a verdict for the defendant, White, (95,) upon which judgment was rendered against Cannon. To save the credit of the jury, it ought to be remarked that this result was probably attained by the circumstance that, by the rulings of the district court, Cannon's most material evidence was excluded. This, however, was admitted and considered by the supreme court, (116,) which thereupon reversed the judgment, and declaring White a "purchaser in bad faith," with full knowledge of the fraud, gave judgment against him not only for the land, but also for damages. (111.)

It will be understood that the act of Congress of March, 1828, (6 Stat., 382,) comprising most of the claims embraced in the report in which the claim of Dyson, under Edward McLaughlin, was contained, excepts especially this and a number of other similar claims in the neutral territory, and provides that they "are superseded, until it is ascertained whether they are situated within the lands claimed by the Caddo Indians."

When White and Cannon discovered the fraud concocted by John McLaughlin and White, they applied to the land office at Opelousas for relief, and that office addressed the General Land Office for instructions, and inquired whether this claim could be considered as confirmed by the above-mentioned act, it being clearly proved that the tract was not claimed by the Caddo Indians. (88.) Direct application was also made to the General Land Office for an order revoking the patent issued in the name of John McLaughlin, on the ground of the fraud practised and here-above explained. The Commissioner replies that there is no evidence of these frauds in that office, nor of the assignment to Cannon; that the claim of Leonard Dyson, as assignee of Edward McLaughlin, was especially excepted from the confirmatory provisions of the act of May 20, 1828; that the patent to John McLaughlin was issued under the law, with the express stipulation that it was in no manner to affect the rights of third persons, nor "prevent a judicial decision between private claimants for the same place, (88, 89, 90,) and that this is, 'therefore, a case in which the executive department

of the Government can exercise no control whatever, it being a judicial one, and properly determinable only by the courts of the country.'" (90.)

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES IN THE CASE.

The decision of the supreme court of Louisiana in this case, covering eight pages of this printed record, is an elaborate statement of the facts and the law of this controversy. It decides many points at issue between the parties. But of which of these points can this court take cognizance under the 25th section of the judicial act?

Certainly not upon the point that that court summarily disposed of the seventeen (17) bills of exception in this record; of some of them, because not noticed in the argument; of others, because they appeared ill-founded. If that court erred in this respect, this court cannot remedy the error. (p. 115, 116.)

Certainly not upon the point (115) what evidence can be admitted in cases of fraud.

Certainly not upon the point that commissions to take depositions can be issued by the clerk under the statutes of Louisiana, without a previous order of court. (115.)

Certainly not upon the point that it is now fully demonstrated that the lands of the Caddo Indians did not cover the land now in dispute.

Nor upon the point, that that court recognizes the land claimed by Cannon under Edward McLaughlin, as identically the same land claimed by White, under the patent to John McLaughlin. (118.)

Certainly not upon the point, that the evidence is conclusive that John McLaughlin never cultivated any part of the land patented to him otherwise than under the roof of his father, and that the register and receiver were grossly imposed upon by false representations and affidavits, which is moreover completely corroborated by the written admission, in the form of an affidavit, made by John McLaughlin in 1843. (117.)

Nor upon the point of fact that, in all the conveyances from Dyson down to Cannon, there is a misdescription of the land, which appeared to the court immaterial, as it is proved that Dyson never owned any other land in the neighborhood, and as the locality of the land is otherwise well

defined by several witnesses who occupied portions of it. (118.)

Certainly not upon that other matter of fact, that the (original) defendant, White, was throughout well aware of the fraudulent character of John McLaughlin's title. (118.)

Certainly not because of the damaging fact found by that court, that he was a purchaser in bad faith.

Most assuredly all these points, which, under its limited jurisdiction, this court cannot investigate—and if it could investigate, would find but too minutely stated by the supreme court of Louisiana—are not within the purview of the 25th section of the judicial act of 1789. The learned counsel for the plaintiff in error will therefore be compelled, by the stress of his case, to admit all the points as true, or at least placed beyond controversy, in the present phase of the case, and to maintain that this court can entertain jurisdiction because there is a "patent" in the case, and there is drawn in question "the construction of a statute of the United States, and the decision was against the title and right claimed by him under such statute."

EXAMINATION OF THE SUPPOSED DEFENSE OF THE ORIGINAL DEFENDANT, NOW PLAINTIFF IN ERROR.

The supreme court of Louisiana declared in this case (p. 117) that it followed the decision of this court in the case of Wilcox *vs.* Jackson, in which this court expressed itself as follows: "We hold the true principle to be this, that whenever the question in any court, State or Federal, is, whether a title to land which had once been the property of the United States has passed, that question must be resolved by the laws of the United States; but that whenever, according to those laws, the title shall have passed, then that property, like all other property in the State, is subject to State legislation, so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States." (13 Peters, 517.)

In accordance with these views, that respectable court expresses itself thus, (p. 117): "If it be true that John McLaughlin obtained from Congress a quit claim to the land in dispute, by falsely and fraudulently attributing to himself the occupation, habitation, and cultivation of his father, Edward McLaughlin, and that the defendant was cognizant of the fraud practised on the register and receiver, then the court will, under the prayer of the plaintiff, 'for all legal, equitable,

general, and special order in the premises,' decree the patent, and the land covered under it, to the plaintiff. The nature of the case is such, that any other ruling or order, in the event of the required proof being made, would perpetuate the fraud, for this court is powerless to nullify an act of Congress on account of fraud practised on its officers; but we deem it perfectly competent to carry out the intention of the sovereign power, which was to give the land to the party who had cultivated and made a habitation thereon. The Supreme Court of the United States, and this court, have, on more than one occasion, decided that persons who obtain patents by a suppression of a part of the facts of the case, will not be permitted to receive any benefit thereby, but that such patents will inure to the parties entitled to recover the lands thus patented. (Kittridge *vs.* Brand, 4 Rob., 79; Knox *vs.* Pulliam, 14 Arm., 123; Lytle, *et al.*, *vs.* State of Arkansas, *et al.*, 22 How., 202,) and the cases therein cited."

What spectacle would be presented if this honest, equitable, and righteous decision of the supreme court of Louisiana were not sustained? One of the most barefaced, deeply-laid, and for years perseveringly-prosecuted plans of fraud that the accumulated legal reports of ages disclose, would be crowned with success. The cases presently to be cited will show that such attempts were repeatedly made in Louisiana, but were shivered by coming in contact with their supreme court, and it would be indecorous to suppose that they could meet with better success in this court. The land system of the United States, so admirable in most of its parts, is peculiarly in danger of being perverted to evil uses, because the evidence is mostly, from necessity, exhibited *ex parte*.

The plausible objection which may be made to the defendant in error—and it ceases to be plausible when examined otherwise than quite superficially—is, that the plaintiff in error holds under a United States patent, which, however fraudulently obtained, is superior to the claim of one who has no title whatever from the United States.

It is true that the defendant in error had no technical title from the United States, but he has a promise of title, an equitable right, such as is protected by the stipulation in the patent opposed to us, "that it shall in no manner affect the rights of third persons, nor preclude a judicial decision between private claimants for the land." (88.)

If that patent was not to affect the 'rights of third persons," they remained the same after before the issuing of

it. What were these rights? The Congress of the United States, knowing the liberality with which the Spanish Government encouraged actual settlements in its boundless colonies, had acquired the "neutral territory between the Rio Hondo and the Sabine river before it passed the act of March 3, 1823, (3 Stat., 756,) by the second section of which persons who had made settlements within the "neutral," the newly-acquired territory, without any previous authority or written title, were empowered to make, and submit to a properly-constituted board, claims to land founded on habitation, occupation, and cultivation previously to the 22d of February, 1819, and in the manner which would have entitled the claimants to a title under the Government exercising the sovereign power over that tract of country. And the board was directed to report to Congress which of these claims ought, in their opinion, to be confirmed.

The report of the register and receiver on the claim of Leonard Dyson, as assignee of Edward McLaughlin, was entirely favorable, (66,) and the expectations held out by the act of March 3, 1823, (3. Stat., 756,) to settlers in the neutral territory, under the Spanish dominion, were realized by the act of May 24, 1828, (6 Stat., 382,) which confirmed most of the claims founded on habitation and cultivation, but suspended the claim of Leonard Dyson, under Edward McLaughlin, and a number of others, until it should be ascertained whether they were situated within the limits of the lands claimed by the Caddo Indians.

The Dyson claim was not rejected, but simply suspended until information was obtained concerning the boundaries of the Indian claim. An unprejudiced reader of the statute would have understood it as meaning, as did the register and receiver at Opelousas, (88,) that as soon as it was ascertained that any of these claims were not in conflict with the Indian claim, and the suspensive condition was removed, they would be considered as confirmed. But the General Land Office, faithful to its system of interpreting everything as harshly as possible against the private citizen, held otherwise. (89.) Granting that the act of May, 1828, did not actually confirm the Dyson claim, there is one thing that no sophistry can take away in this act, and that was the double promise of the Government to ascertain the Indian boundaries, and to confirm those of the excepted claims not in conflict with them. It was no fault of the claimant that the Government and its officers were not sooner apprized of the boundaries of the Indian claim, which were, no doubt,

known to the settlers. Dyson, and the other settlers in the same situation, had reasons to expect what they were told by the plain terms of the act, viz.: that when the cause of the suspension of their claims was removed their titles would be acknowledged. But that required another act of Congress, and that they had not the power to procure. By assigning a special reason for excepting these claims from the general action upon the report, Congress at least recognized that portion of the report of the commissioners which acknowledges the fact of their claims and possessions. Their claims and possessions were not disapproved, but merely held in abeyance. They were told to wait, and this action of the supreme Government could certainly not be undone by the ministerial acts of a subordinate officer, brought about by the fraud of a new claimant for the land.

It is therefore not true, as contended by the counsel for the plaintiff in error in their briefs embodied in the record, that Cannon is a mere outsider, claiming land to which he has no title, as against one holding it under a patent. Cannon has an equitable right to his land, which authorizes him to treat the plaintiff in error as his trustee *in invitum*, and to claim the benefit of the patent, designedly procured to defraud him. The supreme court of Louisiana says, (116):

"We have no doubt, that had it been ascertained at the time of the passage of the act, that the claim, No. 14, of Leonard Dyson, as assignee of Edward McLaughlin, did not lie within the boundaries of the Caddo Indians, it would have been confirmed."

In an analogous case, "Lytle *et al. vs.* the State of Arkansas, (22 How., 208,") Mr. Justice McLean says:

"Now, although it may be true, that until the act of 1832 had passed, the act of 1830 having expired, the pre-emptive right of Cloyes could not be perfected, yet the policy of the laws was, where vested rights had accrued which, by reason of delays in the completion of surveys, could not be carried out, the Government gave relief by extending the law. And the inchoate right was secured by the policy of the Government. It is, therefore, not strictly accurate to say, the party entering a pre-emption has no right. He has a right recognized by the Government, by which he is enabled to perfect his right; and, under such circumstances, no new entry could interfere with a prior one, though imperfect."

Previously to this case, the supreme court of Louisiana had

frequently decided that if a party obtained a patent for land by practising fraud, to the prejudice of another party who had an equitable right which might have been perfected into a patent, the fraudulent patentee shall not have the benefit of the patent, but it shall inure to the equitable claimant. (McGill *vs.* McGill, 4 Ann., 262;) (Kittridge *vs.* Breand, 4 Rob., 79;) Knox *vs.* Pulliam, 14 Ann., 123;) Steinspring, *et al.*, *vs.* Bennett & Sprague, 16 Ann., 201.) The supreme court of Louisiana exercised and possessed the right then to dispose of the patent fraudulently obtained, by virtue of its constitution as a court, both of law and equity. (4 Rob., 79.) The fraudulent patentee is considered as a trustee *in invitum*. Cases similar in principle frequently occur in equity courts. (Story Eq. Jurisprudence, 784, 1255.) In such cases it is often difficult to bring home to the patentee a knowledge of the anterior rights of his adversary; but no such difficulty exists in this instance, for the affidavit of John McLaughlin, of May 12, 1843, fully and clearly establishes not only the absence of all right in himself to this land, but also, affirmatively, that Edward McLaughlin, the affiant's father, was the original settler, and had sold his rights to Leonard Dyson, which declaration the supreme court of Louisiana construes as amounting to a quit-claim by John McLaughlin in favor of Dyson. (P. 118.) The supreme court also recognizes, as established by the evidence, that Reuben White, the plaintiff in error, was fully acquainted with the fraudulent character of John McLaughlin's claim before he purchased from him, (p. 800,) on the 13th of September, 1848, and that at that date the land was in the possession and occupancy of those holding under Dyson.

The point thus relied on by us, and decided five times by the supreme court of Louisiana, had received the same adjudication in other States. Thus, the supreme court of Ohio, in Strong *vs.* Lehmer, (10 Ohio, N. S., p. 93,) says: "If the United States has given to any one any right or equitable title which it is bound to respect, a person subsequently taking a patent, with notice of that right, is bound by it." The supreme court of Missouri, in Carman *vs.* Johnson, (29 Mo. Rep., [8 Jones,] p. 95,) uses the following language: "Upon an issue submitted to the jury on the trial of the cause, they found that the appellant had notice of the prior right of the respondent, and that the patent under which he claims title was obtained by fraud. Under such circumstances, the entry of the respondent will prevail over the patent granted to Carman, and is of course unaffected by any

acts of the land officers at Palmyra, or the Commissioner of the General Land Office, which, as we have seen, were without authority of law."

By looking through the numerous collection of the United States Digest many cases of the same purport will be found; but it is unnecessary to detain the court any longer on a principle so plain and so palpably consonant with common sense and justice.

The point decided is, how rights derived from a patent may, through fraud, pass to another person than the patentee; and we submit that this question does not give jurisdiction to this court under the 25th section of the judiciary act.

Respectfully submitted.

LOUIS JANIN,

Of Counsel for Defendant in Error.